APPENDIX A

RETIREMENT PLANS COMMITTEE

Mr. Kevin F. Kerstiens
Schwabe, Williamson & Wyatt
1600 Pacwest Center
1211 SW Fifth Avenue
Portland, OR 97204

Re: Claims of Sandy Hensley, John Wiest, Jr., Kate Burnham, Donna Hohnstein for Benefits Under Northwest Permanente, P.C. Retirement Plan and Trust

Dear Mr. Kerstiens:

This is in response to your June 28, 1995 letter in which you formally request benefits on behalf of Sandy Hensley, John Wiest, Jr., Kate Burnham, Donna Hohnstein ("claimants") under various Northwest Permanente retirement and benefit plans. In previous letters you stated that claimants consider themselves "employees of Northwest Permanent, P.C., for purposes of retirement and other employer-provided benefits." They seek benefits equal to the difference between the retirement benefits they have under the Kaiser Foundation Plan, Inc. Retirement Plan and the retirement benefits they would have had if claimants had been treated as employees of Northwest Permanente ("NWP") eligible to participate under the Plan.

Because I am the designated representative of the committee that serves as administrator of the Northwest Permanente, P.C., Retirement Plan and Trust (the "Plan"), I am responding

to your clients' request for benefits under that plan.[1] For the reasons detailed below, your clients' claim for benefits under the Plan must be denied.

(1) *Eligibility for Benefits Under the Plan.*

According to the terms of the Plan, a person is eligible to participate only if he/she is a "Qualified Employee." A Qualified Employee is defined in part as ". . .any employee of Employer." The Employer is defined under the Plan as NWP.

For your convenience, I am enclosing a copy of the Plan's eligibility sections with pertinent provisions highlighted.

(2) *Claimant's Eligibility Under the Plan.*

1. We conclude that claimants are not eligible to participate and receive retirement benefits under the Plan because they are not now, and have never been, employees of NWP. Because they are not employees of NWP, none of them are an "employee[s] of Employer," and therefore cannot participate under the Plan as Qualified Employees. In reaching this conclusion, I have considered the following facts:

2. Claimants each are employees of Kaiser Foundation Health Plan ("Health Plan"). They have at all times received their compensation, as well as retirement and welfare benefits, through Health Plan.

3. Health Plan withholds, reports and pays federal and state payroll taxes as the employer of claimants.

4. The facilities at which claimants work are owned by Health Plans and Kaiser Foundation Hospitals

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[1] The decision expressed in this letter is made solely with respect to your clients' eligibility under the Northwest Permanente, P.C. Retirement Plan.

("Hospitals").[2] NWP does not own or provide any facilities or equipment utilized by claimants in their employment as a physician assistants/nurse practitioners.

5. Claimants were hired to work for Health Plan and the circumstances of their employment indicate that they have been considered, and have considered themselves as, employees of Health Plan. Application forms, hire letters, other correspondence, membership on Allied Health administrative boards or committee, and other documents clearly indicate that it has always been the understanding of claimants, Kaiser and NWP that claimants are employees of Health Plan. The parties intended that each of the claimants would be, function as, and be treated as, an employee of Health Plan, not NWP.

6. Physicians who work for NWP do not have the authority to terminate claimants. Ultimate decisions concerning claimants' pay, benefits, hiring policies and termination are, and have always been, within the exclusive authority of Health Plan's Human Resources Department.

7. Health Plan defines all on-the-job grievance procedures available to claimants. Health Plan's Human Resources Department processes and resolves such grievances. NWP does not.

(3) *Review of Decision.*

Claimants may request a review of this decision by notifying me in writing. For your convenience, I have enclosed a copy of the claims procedures with the pertinent provisions highlighted. These will control the claims review process, should your clients choose to appeal this decision.

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[2] Health Plan and Hospitals are legally separate and distinct from NWP. They do not control, nor do they have any common ownership, with NWP.

If a review is requested, documents pertinent to your clients' claim will be made available for inspection. Also, a hearing to consider the request for review may be granted at the discretion of the administration. A written response to the request for review will be sent as soon as possible after such request, if any, is received.

Sincerely,

RETIREMENT PLANS COMMITTEE

by Ann Stenzel
Director, Pension and Benefits

cc: Mr. John Acosta

APPENDIX B

RETIREMENT PLANS COMMITTEE

January 30, 1996

Ms. Margaret Hoffman
Ms. Jill S. Gelineau
Schwabe, Williamson & Wyatt
1600 Pacwest Center
1211 SW Fifth Avenue
Portland, OR 97204

Re: Claims of Sandy Hensley, John Wiest, Jr., Kate Burnham, Donna Hohnstein for Benefits Under Northwest Permanente, P.C. Retirement Plan and Trust

Dear Ms. Hoffmann and Ms. Gelineau:

Ms. Gelineau's September 22, 1995 letter requested, on behalf of your clients, Sandy Hensley, John Wiest, Jr., Kate Burnham and Donna Hohnstein ("claimants"), review of the July 28, 1995 decision ("the Decision") denying claimants' claims for benefits under the Northwest Permanente Retirement Plan and Trust ("the Plan"). In its November 3, 1995 letter, the Retirement Plans Committee (the "Committee") advised claimants that their request for review of and hearing on the Decision was granted. On November 27, 1995, however, Ms. Gelineau advised Ms. Stenzel by letter that claimants' "request for hearing is withdrawn" and that claimants were requesting that "a final decision be made upon this matter based upon the record as it stands."

This letter is the Committee's ("Committee") response to claimants' request for review of the Decision.

1. *Matters Considered On Review.*

On review of the Decision, the Committee has considered the following:

1. December 22, 2994 from Kevin Kerstiens to Plan Administrator, Northwest Permanente, P.C. ("NWP");[3]

2. December 28, 1994 letter from John Acosta to Kevin Kerstiens, with enclosures;

3. January 31, 1995 letter from Kevin Kerstiens to John Acosta, with enclosures;

4. February 14, 1995 letter from John Acosta to Kevin Kerstiens;

5. February 15, 1995 letter from Kevin Kerstiens to John Acosta;

6. April 3, 1995 letter from Kevin Kerstiens to John Acosta;

7. April 5, 1995 letter from John Acosta to Kevin Kerstiens;

8. April 26, 1995 letter from John Acosta to Kevin Kerstiens;

9. May 12, 1995 letter from Kevin Kerstiens to John Acosta;

10. June 5, 1995 letter from John Acosta to Kevin Kerstiens;

11. June 28, 1995 letter from Kevin Kerstiens to John Acosta;

12. July 10, 1995 letter from John Acosta to Kevin Kerstiens, with enclosures;

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[3] This and the other documents listed herein are attached as Appendix A.

13. July 28, 1995 letter from John Acosta to Kevin Kerstiens;

14. July 28, 1995 letter from Ann Stenzel, on behalf of the Committee, to Kevin Kerstiens;

15. July 31, 1995 letter from John Acosta to Kevin Kerstiens, with enclosures;

16. September 21, 1995 letter from Ms. Hoffman to John Acosta;

17. September 22, 1995 letter from Ms. Hoffman to John Acosta;

18. September 22, 1995 letter from Ms. Hoffman to Ann Stenzel;

19. September 25, 1995 letter from John Acosta to Ms. Hoffman;

20. October 10, 1995 letter from Ms. Gelineau to the U.S. Department of Labor, Pension and Welfare Benefits Administration (Seattle office);

21. October 30, 1995 letter from the U.S. Department of Labor, Pension and Welfare Benefits Administration (Seattle office) to Plan Administrator, NWP;

22. November 3, 1995 letter from Ms. Stenzel, on behalf of the Committee, to Ms. Hoffman;

23. November 27, 1995 letter from Ms. Gelineau to Ms. Stenzel;

24. W2 forms, W4 forms, tax sheltered annuity forms, savings and retirement plan forms, employment application, and other documents pertaining to Ms. Hensley's employment by Kaiser Foundation Health Plan;

25. W2 forms, tax sheltered annuity forms, savings and retirement plan forms, employment application, tax

forms, and other documents pertaining to Mr. Wiest's employment by Kaiser Foundation Health Plan;

26. W2 forms, loan verification forms, tax forms, savings and retirement plan forms, employment application, and other documents pertaining to Ms. Burnham's employment by Kaiser Foundation Health Plan; and

27. W2 forms, time cards, savings and retirement plan forms, and other documents pertaining to Ms. Hohnstein's employment by Kaiser Foundation Health Plan.

By her November 3, 1995 letter, Ms. Stenzel advised claimants that their request for a hearing was granted, and you were asked to contact Mr. Acosta to schedule that hearing. Claimants were invited to submit "in advance of the hearing evidence and written arguments they wish to be considered prior to the hearing itself." Claimants were offered any additional information which you or they believed necessary to prepare for the hearing or to prepare and submit written materials in advance of the hearing.

Claimants declined the opportunity to submit material for the Committee's consideration and to present evidence and arguments at hearing. Ms. Gelineau's November 27, 1995 letter withdrew claimants' earlier request for a hearing and asked that the review be made based on "the record as it stands." Thus, the review proceeds on the current record without additional evidence or arguments from claimants.

2. *Summary of Initial Decision*

On July 28, 1995, Ms. Stenzel, for the Committee, advised Mr. Kerstiens that the claimants' claims for benefits under the Plan were denied. None of the claimants was a "Qualified Employee" of the "Employer." Under the Plan, a "Qualified Employee" is defined in part as "any employee of Employer,"

and the "Employer" is defined as NWP. The circumstances upon which the decision was based are set forth in Ms. Stenzel's July28, 1995 letter to Mr. Kerstiens, which letter is incorporated into this section.

3. Decision on Review

a. *Eligibility for Benefits Under the Plan.*

In his December 22, 1994 letter, Mr. Kerstiens stated that claimants consider themselves "employees of Northwest Permanente, P.C., for purposes of retirement and other employer-provided benefits." Claimants seek benefits equal to the difference between the retirement benefits they have under the Kaiser Foundation Health Plan, Inc. Retirement Plan and the retirement benefits they would have received if claimants had been treated as employees of NWP, eligible to participate under the Plan.

According to the terms of the Plan, a person is eligible to participate only if he or she is a "Qualified Employee." A Qualified Employee is defined in part as ". . . any employee of Employer." The Plan defines "Employer" as NWP.

The Committee concludes that the Plan definitions establish the criteria for claimants' eligibility for benefits under the Plan. Claimants have not disputed that these definitions govern the determination of their claims. Accordingly, the Committee's review of the Decision is based upon the undisputed applicability of these definitions.

b. *Claimants' Eligibility Under the Plan.*

The Committee concludes that claimants are not eligible to participate and receive retirement benefits under the Plan for two independent reasons. First, claimants have impliedly accepted the analysis contained in the Decision. Claimants neither disputed the findings in the Decision nor submitted

evidence or arguments controverting the analysis in the Decision. Claimants presented no information to support their claims for benefits other than that presented prior to the Decision, and thus they have not challenged the propriety of the Decision.

Second, and as an entirely independent and self-sufficient basis for denial of claimants' appeal, the Committee concludes that claimants are not eligible to participate and receive retirement benefits under the Plan because they are not now, and have never been, "employee[s] of Employer" under the Plan. Because claimants are not employees of NWP, they are not, under the Plan, "employee[s] of Employer," and they are not eligible to participate under the Plan as "Qualified Employee[s]." In reaching this conclusion, the following facts were deemed relevant, no one of which, standing alone, however, compelled the Committee's decision:

(1) Claimants each are employees of Kaiser Foundation Health Plan ("Health Plan"). Claimants at all times have received their compensation, as well as retirement and welfare benefits, through Health Plan. Mr. Kerstiens confirmed this in his December 22, 1994 letter to Mr. Acosta, which states that claimants "are paid by and receive their retirement and health benefits through Kaiser Foundation Health Plan of the Northwest." Various benefits and claim forms and other documents completed, signed, received or sent by claimants identify their employer as Health Plan or pertain to benefit plans available only to Health Plan employees and not to NWP physicians.

(2) Health Plan withholds, reports and pays federal and state payroll taxes as the employer of claimants. The W2 forms and W4 forms signed by claimants identify Health Plan as claimants' employer. NWP does not now, nor has it ever, treated claimants as its W2 employees. Nor has NWP

withheld, reported or paid any taxes attributable to the employment of claimants.

(3) Under the Plan, all benefits are based on W2 compensation. Claimants' W2 forms show that their W2 compensation is from Health Plan, and that their W2 compensation from NWP is zero. Thus, because claimants receive no W2 compensation from NWP, under the plan their benefit amount is zero. The drafter's intent, as well as the historical treatment of the terms "employee" and "Qualified Employee" under the Plan, limit participation to W2 employees of NWP, and none of the claimants is or has ever been a W2 employee of NWP.

(4) The facilities at which claimants work are owned by Health Plan and Kaiser Foundation Hospitals ("Hospitals").[4] NWP does not own or provide any facilities or equipment utilized by claimants in their employment as physician assistants and nurse practitioners.

(5) Each claimant was hired to work for Health Plan. Claimants' application forms confirm this, both by their content and form. Further, the application materials and process for NWP physicians are different, more voluminous, and longer. The circumstances of each claimant's employment indicate that he or she has been considered, and has considered himself or herself, an employee of Health Plan. Claimants' various benefit and claim forms, W2 and W4 forms, tax documents, and other documents, for example, demonstrate this understanding. Application forms, W2 and W4 forms, membership on Allied Health administrative boards of committees, and other documents support the inference that it has always been the understanding of claimants and Health Plan that claimants are employees of

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[4] Health Plan and Hospitals are legally separate and distinct from NWP. Neither Health Plan nor Hospitals controls or has any common ownership with NWP.

Health Plan. The parties intended that each of the claimants would be, function as, and be treated as, an employee of Health Plan.

(6) NWP physicians do not have the authority to terminate claimants. Ultimate decisions concerning claimants' pay, benefits, hiring policies and termination are, and have always been, within the exclusive authority of Health Plan's Human Resources Department.

(7) Health Plan establishes all on-the-job grievance procedures available and applicable to claimants. Health Plan's Human Resources Department processes and resolves such grievances. NWP does not.

(8) The Decision, as well as the findings and conclusions in this letter, are consistent with the findings in Internal Revenue Service's March 12, 1984 Private Letter Ruling, which determined that employees of Health Plan (such as claimants) need not be counted by NWP for tax purposes, because they are not "leased employees" under Section 414(n) of the Internal Revenue Code.

(9) The Decision, as well as the findings and conclusions in this letter, are consistent with the U.S. Department of Labor, Pension and Welfare Benefits Administration's ("Administration") October 30, 1995 letter to the Plan Administrator regarding the Administration's ERISA review of NWP. In her October 10, 1995 letter to the Administration, Ms. Gelineau set forth the bases of claimants' claims and stated that NWP's "failure to include these physician assistants and nurse practitioners in these plans jeopardizes the qualified status of the plans under the applicable Internal Revenue Code and ERISA [provisions] ***." Ms. Gelineau's letter included several attachments, including the July 28, 1995 letter advising of the Decision, for the Administration's consideration. Three weeks thereafter,

the Administration issued its notice of closure of ERISA review.

The Committee concludes that claimants are not eligible to participate and receive retirement benefits under the Plan. Therefore, the Committee must affirm the July 28, 1995 decision denying claimants' claims for benefits under the Plan.

Sincerely,

RETIREMENT PLANS COMMITTEE

by Harry Stathos

For the Retirement Plans Committee

cc (w/encls): Mr. John V. Acosta

bc (w/encls):

Mr. Thomas P. Deering
Mr. Scott Crawford
Ms. Kim Lomas

APPENDIX C

Executive Offices, Ordway Building

September 20, 1995

Mr. Kevin F. Kerstiens
Schwabe, Williamson & Wyatt
1600 Pacwest Center
1211 SW Fifth Avenue
Portland, OR 97204

Dear Mr. Kerstiens:

This letter is written on behalf of the Administrative Committee provided for under Permanente Physicians Retirement Plan for Northwest Permanente, P.C./Physicians & Surgeons ("Plan"). In preparing this letter, we have reviewed various correspondence exchanged between you and the law firm of Stoel Rives, and between you and the plan administrator for Northwest Permanente, P.C., Retirement Plan and Trust, regarding the claimed eligibility of Sandra Hensley, John Wiest, Jr., Katherine Burnham and Donna Hohnstein ("claimants") under various Northwest Permanente benefits plans. Included in this review was your June 28, 1995 letter to Mr. John Acosta, in which you describe the plans or programs under which your clients claim or intend to claim.

Any claim of eligibility, coverage or benefits under the Plan by the four persons referred to above is denied. The claimants are employees of Kaiser Foundation Health Plan of the Northwest ("Health Plan") and they are not employees of Northwest Permanente, P.C./Physicians & Surgeons ("Medical Group"). Only certain Medical Group employees

are covered by the Plan. Health Plan employees are not eligible to participate in the Plan.

If you wish to appeal this decision, please notify me in writing. The procedure for an appeal is set forth in the enclosed documents. That procedure will govern the appeal process regarding your claims except that the request for review need not be made within 90 days of receipt of the written denial of the claim. If your clients decide to appeal, they may inspect relevant documents, request a hearing, which hearing request may be granted at the discretion of the plan administrator, and receive a written response to their appeal, if an appeal is filed.

Sincerely,

Ellen Canter
Director, Employee Benefits

Services For and On Behalf of the Administrative Committee, Permanente Physicians Retirement Plan for Northwest Permanents, P.C./Physicians & Surgeons

APPENDIX D

December 13, 1996

Roland F. Banks, Esq.
Schwabe Williamson & Wyatt P.C.
1500 Pacwest Center
1211 SW Fifth Avenue
Portland, OR 97204

Re: Permanente Physicians Retirement Plan for Northwest Permanente, P.C./Physicians & Surgeons (the"Plan")—Claims of Sandra Hensley, John Wiest, Jr., Katherine Burnham and Donna Hohnstein (the "Claimants")

Dear Mr. Banks:

On behalf of the Administrative Committee (the "Committee") of the Plan, I am writing to inform you that the Committee has taken action on your request for an appeal of the Committee's initial denial of the Claimants' claims to be eligible as participants under the Plan, as requested in your letter dated June 11, 1996 to Ellen Canter. For the reasons set forth below, the Committee has determined that the Claimants are not "qualified employees" eligible to participate in the Plan. Therefore, the Committee has upheld its initial decision denying the Claimants' claim.

I. *Documents Considered By Committee*

In reaching its decision, the Committee considered your letter of June 11, 1996 and the following attachments:

1. Written Argument In Support of Appeal.

2. Affidavit of Sandra Hensley, with supporting documents, exhibits 1 through 22.

3. Affidavit of John Wiest, Jr., with supporting documents, exhibit 23.

4. Affidavit of Donna Hohnstein, with supporting documents, exhibits 24 through 25.

5. Affidavit of Katherine Burnham, with supporting documents, exhibits 56 through 58.

The committee also considered the Summary of Claims for Administrative Committee Review and Recommendation of Action (the "Summary of Claims"). For your convenience, a copy of the Summary of Claims is attached.

II. *Committee's Conclusions*

The Committee, which has the sole discretion to interpret the terms of the Plan and to determine eligibility for benefits under the Plan, determined that the Claimants are not employees of the Medical Group for purposes of the Plan. The Committee also concluded that the Claimants are instead employees of the Health Plan. Since the Claimants are not employees of the Medical Group, they cannot be "qualified employees" eligible to participate under the Plan. Therefore, the Committee concluded that the Claimants are not eligible to participate and receive benefits under the Plan.

In reaching the conclusion that the Claimants are not "qualified employees" eligible to participate in the Plan, the Committee made the following determinations:

1. *"Employee" Means W-2 Employee.* The Committee determined that the term "employee" as used in the Plan means an employee for whom the Medical Group files and IRS Form W-2 as employer ("W-2 employee"). The Claimants are not W-2 employees of the Medical Group. Since the Claimants are not W-2 employees of the Medical

Group, they are not "employees" for purposes of the Plan. Accordingly, the Claimants cannot be "qualified employees" eligible to participate in the Plan.

2. *Factors Indicate That Claimants Are Employees of Health Plan.* The Committee also concluded that the Claimants are common-law employees of the Health Plan, not the Medical Group. In reaching this conclusion, the Committee made the following determinations:

- Health Plan determines and pays Claimants compensation and benefits;
- Health Plan withholds, reports and pays federal taxes;
- Claimants perform work on Health Plan and Hospitals premises;
- Health Plan hired Claimants;
- Health Plan retains right to terminate Claimants;
- Health Plan grievance procedures apply to Claimants; and
- All parties considered Claimants to be employees of Health Plan.

3. *Private Letter Ruling Supports Finding that Claimants are not Medical Group Employees.* In reaching the decision that the Claimants are not employees of the Medical Group for purposes of the Plan, the Committee also relied on the Private Letter Ruling ("PLR") issued by the Internal Revenue Service (the "IRS") on March 12, 1984. The IRS acknowledged in this PLR that the Health Plan's employment of the allied health professionals who support the Medical Group is a well-established form of operation in the group practice prepaid health care field.

4. *Department of Labor Findings Support Committee's Decision.* The Committee also relied on the letter dated October 30, 1995 from the U.S. Department of Labor, Pension and Welfare Benefits Administration's (the "DOL") to the Plan Administrator of the Retirement Plan regarding the Claimants' claims. The DOL's swift conclusion of its review in this matter implies that the DOL did not find the Claimants' claims to have sufficient merit to require further investigation.

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Please do not hesitate to call me if you have any questions regarding the foregoing.

Sincerely,

Ellen Canter
Director, Employee Benefits

Services For and On Behalf of the Administrative Committee, Permanente Physicians Retirement Plan for Northwest Permanente, P.C./Physicians & Surgeons

bc: Mr. John V. Acosta
Ms. Kim Lomax
Mr. Scott Crawford

Mrs. Barbara B. Creed
Mr. Robert A. Gordon
Ms. Laura A. Woodman